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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 VIAVI SOLUTIONS INC.,

16 Plaintiff,

17 v.

18 PLATINUM OPTICS TECHNOLOGY INC.,

19 Defendant.

Case No. 5:20-cv-5501-EJD (SVK)

STATUS REPORT

On May 11, 2021, the Court stayed this case in view of Defendant’s filing of three petitions for *Inter Partes* Review (“IPR”) with the Patent Trial and Appeal Board (“PTAB”), challenging all but one of the asserted claims in the patents-in-suit.¹ Dkt. No. 95. Plaintiff Viavi Solutions Inc. (“Viavi”) files this status report following the PTAB’s decision on PTOT’s first IPR petition. *Id.* at 3. Defendant Platinum Optics Technology (“PTOT”) provides their position below.

On July 27, 2021, the PTAB denied institution of PTOT’s IPR petition with respect to U.S. Patent No. 9,588,269. *Platinum Optics Technology Inc. v. Viavi Solutions Inc.*, No. IPR2021-00424, Paper No. 9 (P.T.A.B. July 27, 2021). The PTAB’s deadline to decide whether to institute IPR(s) on PTOT’s two other petitions are August 18 (for U.S. Patent No. 10,222,526) and October 13 (for U.S. Patent No. 9,354,369).

Viavi’s Position

As a result of the PTAB’s denial of institution, Viavi will move to lift the stay. In addition, Viavi is in the process of reverse engineering a filter that it located in a mobile phone in the United States during the stay that it believes is manufactured by PTOT. Viavi will move for leave to amend its infringement contentions to include this evidence of PTOT’s infringement. If PTOT indicates that it will oppose Viavi’s motion to amend and continues to assert that the current case is limited to the “11246 filter” (Dkt. No. 45 at 5-9), Viavi also intends to file a new Complaint in this District to ensure that it can pursue efficient judicial resolution of its patent infringement allegations. Viavi’s position is that this second case is not needed because its original Complaint and infringement contentions already cover (or should be amended to cover) all PTOT low-angle shift optical filters that have been imported into the United States since May 2020. If leave is granted, Viavi will dismiss the second Complaint.

PTOT’s Position

The Court’s stay order found “a stay pending the PTAB’s decision ... will promote efficiency ... *between now and when the last PTAB institution decision will be rendered* ...” and instructed the parties to “file a joint status report within seven days of the PTO’s decision.”

¹ PTOT did not challenge asserted claim 4 of U.S. Patent No. 9,354,369.

1 ECF 95 at 2, 4 (emphasis added). Because two of the three IPR petitions remain pending,
2 Viavi's proposed joint status report is premature and not in keeping with the Court's instructions.

3 Should the Court so desire, the parties are happy to provide further information on the case
4 status.

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6 Dated: August 3, 2021

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